

PHILIP W. LYTTLE

IBLA 81-515

Decided January 21, 1982

Appeal from decision of the California State Office, Bureau of Land Management, declaring various lode mining claims abandoned and void. CA MC 21666 through CA MC 21687.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Philip W. Lyttle, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Philip W. Lyttle has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 12, 1981, which declared the Olympus II through Olympus XI and the Olympus 12 through Olympus 24 lode mining claims abandoned and void under section 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(c) (1976).

Notices of location of these pre-1976 claims were recorded with the California State Office on February 15, 1979, pursuant to section 314(b) of FLPMA. Neither an affidavit of annual assessment work nor a notice of intention to hold these claims accompanied the location notices.

On January 2, 1981, appellant filed proofs of labor for the 1980 assessment year. Subsequently, on March 12, 1981, the State Office issued the decision appealed herein, holding the claims abandoned and void for failure to file assessment work notices for the period September 1, 1978, to September 1, 1979, on or before October 22, 1979. Appellant timely appealed.

In his appeal, appellant alleges that he timely filed the assessment work for 1979 with the State Office and asserts that he has a certified mail receipt card which would establish that BLM received the proof of assessment work. In view of this assertion we would normally issue an order directing appellant to provide this Board with the return receipt card in order to substantiate his allegation. Cf. Bernard S. Storper, 60 IBLA 67, 71 (1981). However, our review of the case record discloses that, even if appellant were able to show that he timely submitted proof of labor or a notice of intention to hold on or prior to October 22, 1979, we must nevertheless declare his claims abandoned and void for a different reason. <sup>1/</sup>

[1] As we noted above, proofs of labor for calendar year 1980 were not received by the State Office until January 2, 1981. As we noted in James V. Joyce (On Reconsideration), 56 IBLA 327 (1981), the annual filings required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), must be made within each calendar year, i.e., on or after January 1 and on or before December 30. While we recognize that appellant, in all probability mailed these proofs within calendar year 1980, the statute and regulations require that they be filed within the calendar year. Filing occurs only upon receipt in the proper office of BLM. See Don Chris A. Coyne, 52 IBLA 1 (1981). This Department has no authority to excuse late compliance with statutory provisions. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Thus, we must find appellant's claims abandoned and void for failure to file proof of assessment work or a notice of intention to hold with BLM within calendar year 1980.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

---

James L. Burski  
Administrative Judge

We concur:

---

Bruce R. Harris  
Administrative Judge

---

C. Randall Grant, Jr.  
Administrative Judge

---

<sup>1/</sup> To the extent that the decision of the State Office was premised on a finding that appellant was required to file the 1978-79 proof of assessment work on or before Oct. 22, 1979, that decision is in error. See Harry J. Pike, 57 IBLA 15 (1981); Perry L. Johnson, 57 IBLA 20 (1981). The statute merely required the filing of assessment work which had been filed with local offices of the State within the 3-year period from Oct. 21, 1976, to Oct. 22, 1979. Any such assessment work would suffice to fulfill the statutory requirements.

